

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF NEW JERSEY**

3 **IN RE: VALSARTAN, LOSARTAN, CIVIL ACTION NUMBER:**
4 **and IRBESARTAN PRODUCTS 1:19-md-02875-RMB-SAK**
5 **LIABILITY LITIGATION Status Conference**
6 _____ **via Teams videoconferencing**

7 Mitchell H. Cohen Building & U.S. Courthouse
8 4th and Cooper Streets
9 Camden, New Jersey 08101
 Wednesday, December 18, 2024
 Commencing at 4:00 p.m.

10 **B E F O R E:** **THE HONORABLE THOMAS I. VANASKIE (RET.),**
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22 Proceedings recorded by mechanical stenography; transcript
23 produced by computer-aided transcription.
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(Appearances continued onto next page)

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Larry MacStravic, The Courtroom Deputy

Loretta Smith, Esquire, Judicial Law Clerk to the Honorable
Robert B. Kugler (Ret.)

Clarissa Lintner, Esquire, Judicial Law Clerk to the Honorable
Renée Marie Bumb, Chief Judge

Rosemarie Bogdan, Esquire

Corey Weinstein, Esquire

1 (PROCEEDINGS held via Teams videoconferencing before
2 the Honorable Thomas I. Vanaskie (Ret.), Special Master, at
3 4:00 p.m. as follows:)

4 (Discussion was held off the record.)

5 THE COURT: And, Daniel, are you going to be the
6 spokesperson on the plaintiffs' side?

7 MR. NIGH: I will. I will for the bellwether issues,
8 and then we have -- I believe Chris Geddis will be on for the
9 other issue.

10 THE COURT: Okay.

11 (Discussion was held off the record.)

12 THE COURT: We'll give it a minute and then we'll get
13 started.

14 (Pause.)

15 THE COURT: All right. Why don't we get started.

16 I scheduled this conference call now and then sent
17 out a tentative listing of bellwether -- cases selected for
18 bellwether trials, the procedure.

19 I've received the parties' responses and objections,
20 and they're well-taken, by the way.

21 And so I thought I'd start our call today by
22 soliciting proposals from each side about how you want to
23 proceed to select the next cases for bellwether trials.

24 Victoria, are you speaking on behalf of the defense?

25 MS. LOCKARD: Yes; on behalf of the manufacturers,

1 Your Honor. There may be some additional discussion from the
2 wholesalers.

3 THE COURT: Okay. Yes.

4 MS. LOCKARD: But I think I can probably lead off.

5 I mean -- and, Your Honor, I apologize we didn't get
6 back to you on the list, you know, maybe as quickly as we
7 should have. We were working and meeting and conferring to try
8 to work through some of these issues, and so --

9 THE COURT: And I think I jumped the gun there. I
10 just want to keep the case moving and get these trials
11 identified. And so I jumped the gun. No need for you to
12 apologize.

13 MS. LOCKARD: Okay. I just -- I wanted to make sure
14 you knew we were working on it, not sitting on our hands.

15 But I think we are in agreement with the plaintiffs
16 that Kennedy and Murawski will have to come out of the pool.
17 From Teva's perspective, we thought there was a way to work
18 around on Kinkela, but it seems like there are enough issues
19 that that's a tricky enough one. We have no objection if we
20 want to pull that one out.

21 Plaintiffs' proposal in their letter was that we have
22 the Court randomly repick to fill the two or now three slots
23 that need to be replaced. And on the defense perspective, that
24 is agreeable with us. So we would be in agreement with keeping
25 the two cases that are not problematic, which are the Meeks

1 case and the Dufrene case, and then having Your Honor repick
2 three additional cases from the list of eligible cases which
3 are in plaintiffs' submission letter.

4 THE COURT: Okay. So is there agreement that the
5 cases in plaintiffs' letter can be suitable for bellwether
6 trials?

7 MS. LOCKARD: From our perspective, yes. But you
8 will see Ms. Kapke popped on, and I think there is an issue
9 with the wholesalers and retailers that need to be addressed
10 with some of these.

11 THE COURT: All right. Before I call upon Kara.
12 Daniel, are you in agreement that we can pick from
13 the remaining cases three that need to be yet selected?

14 MR. NIGH: That's right. We're in agreement. We've
15 got the list. I think it's seven cases. And I agree that we
16 replace Kennedy, Kinkela and Murawski and pick three new cases.

17 THE COURT: Okay. All right.

18 And, Kara, and I see Jeff, you've popped up as well,
19 so let's hear from you all.

20 MS. KAPKE: Well, Your Honor, I think it's our
21 understanding that the Court wants to have cases worked up for
22 trial that can be heard in Judge Bumb's courtroom. And right
23 now none of the pharmacy defendants in these cases have waived
24 their *Lexecon* rights. They haven't actually been put to the
25 test on whether they have *Lexecon* rights.

1 And so what we've said repeatedly is that it's
2 plaintiffs' position that they want to have a case solely
3 against the ZHP API manufacturers, ZHP, Teva, Torrent, that
4 makes sense to us. And so we think that the pharmacies should
5 be dismissed with prejudice from those cases and go from there.

6 So we have not -- the pharmacies in these cases, in
7 the seven cases, have not talked to their clients, for
8 instance, about whether they would assert their *Lexecon* rights
9 or whether they would waive their *Lexecon* rights. We have not
10 made that determination as of yet. I do know that there are
11 some clients who would, in fact, assert their *Lexecon* rights.
12 So I want that to be clear for the record.

13 THE COURT: Okay. Jeff, did you want to be heard?

14 MR. GEOPPINGER: Yes, Your Honor. Thank you.

15 THE COURT: Mr. Geoppinger.

16 MR. GEOPPINGER: With respect to the wholesalers,
17 we're kind of in a similar boat with the pharmacies. The
18 wholesalers haven't been put to the task of answering that
19 question and whether they would waive their *Lexecon* right or
20 not in any particular case. There are some wholesaler
21 defendants sprinkled amongst the seven cases that are on that
22 list. So if one of them is selected and there's a wholesaler
23 defendant in it, that question will have to be answered. And I
24 can't tell you the answer to that question right now with
25 respect to *Lexecon*.

1 THE COURT: Okay.

2 MR. GEOPPINGER: I will say, however, though, and
3 this is with respect to wholesalers, you know, a lot of times
4 in these cases, you know, personal injury plaintiffs don't know
5 who distributed their product.

6 So if a case is selected with a wholesaler, there
7 will be an opportunity to look at that. And just because a
8 wholesaler may be named in the complaint may be an opportunity
9 to have that wholesaler dismissed because they're not
10 appropriate because, for instance, the plaintiff might have got
11 their drugs from a local pharmacy. Like, for instance, the
12 Gaston Roberts case, where a wholesaler, meaning one of the
13 three wholesalers in the litigation, would not have been a
14 distributor for the pharmacy, such that, you know, we could
15 probably work out getting the wholesaler out of the case, I
16 would hope, such that, you know, Lexecon wouldn't even become
17 an issue.

18 So that's a long way of saying: Once they're
19 selected, we'll take a look at it and try to figure it out.

20 MS. KAPKE: I will also --

21 THE COURT: Yeah. I think that's where -- go ahead,
22 Victoria.

23 MS. KAPKE: It was Kara. Sorry.

24 THE COURT: Kara.

25 MS. KAPKE: I will also note, Your Honor, I don't

1 represent Apothecare Pharmacy in the Yolanda Bonmon case. And,
2 you know, I don't even know if they've entered an appearance or
3 if there was proof of service filed. But they were named as a
4 defendant in the short form complaint.

5 I think diversity jurisdiction would be lacking if
6 they remained a defendant. So, again, I can't speak for that
7 pharmacy. I don't even know if they're a proper defendant or
8 not. But there might be a lack of complete diversity in that
9 case if the pharmacy defendant remains.

10 THE COURT: All right.

11 MS. LOCKARD: And I think that's one that Mr. Nigh
12 and I discussed. And I thought that the Apothecare Pharmacy
13 issue was resolved. Either they weren't served or they were
14 being dismissed, which is why it was still on the list.

15 MR. NIGH: And this is Daniel Nigh, I think that's
16 correct, Victoria.

17 THE COURT: Okay. So that case is all right to move
18 forward then.

19 MR. NIGH: Yes.

20 THE COURT: I did want to take this time, before I
21 forget, because we had mentioned Loretta, Loretta Smith,
22 long-time law clerk for Judge Kugler, who has continued to work
23 on this matter, will be reassigned, I take it. And Loretta has
24 Judge Bumb's law clerk, Clarissa. I think Clarissa is on the
25 line as well, and I wanted to introduce you all to both

1 Clarissa and to give Loretta a chance to wish you all well.

2 So, Loretta, how about if I turn it over to you.

3 MR. NIGH: Loretta, you're on mute.

4 MS. SMITH: I just wanted to say what Judge Vanaskie
5 has alluded to; that I have been reassigned to one of the other
6 clerks in the courthouse, and Clarissa Lintner, who is on the
7 call, I believe, will be handling the valsartan MDL from now
8 on. So you will be seeing and hearing maybe or seeing her
9 opinions or her work in the coming months.

10 And I just wanted to also thank you so much for
11 giving me the opportunity to learn from you all. Oh, my, it's
12 been an amazing journey to read your arguments and submissions
13 and to research them and to learn so much from you all. Thank
14 you. Thank you. Thank you.

15 So, you know, I wish you well with Clarissa. I know
16 you'll have every thoughtful opinion from her. She's just a
17 wonderful law clerk. And, you know, have great holidays.
18 Thanks. See you.

19 THE COURT: Thank you.

20 MR. NIGH: Thank you, Loretta.

21 MS. LOCKARD: Thank you.

22 MR. NIGH: I'd like to say from the plaintiffs' side,
23 thank you for all your hard work. We'll miss you. And we look
24 forward to working with Clarissa. Thank you.

25 MS. SMITH: Thanks.

1 MS. LOCKARD: And I echo that as well. You've been a
2 trooper throughout this long journey, so we know you have put
3 in a lot of time and effort, and we appreciate it.

4 MS. SMITH: Thanks, Victoria. Thanks, Daniel. See
5 you. Bye.

6 MR. NIGH: Thanks.

7 MS. LOCKARD: Your Honor.

8 THE COURT: Yes.

9 MS. LOCKARD: I did have just a couple of things also
10 that were in our letter that I wanted to make sure I got on the
11 record.

12 THE COURT: Absolutely. Go ahead.

13 MS. LOCKARD: So the first, as you'll see from our
14 submission, Teva, you know, recognizing these cases can move
15 forward, Teva, our Israeli entity, Teva Industries, we do have
16 a personal jurisdiction argument that we want to make sure we
17 are preserving and we'd get an opportunity to brief that.

18 We addressed this in the TPP trial. We filed a
19 motion for summary judgment as to the lack of personal
20 jurisdiction for this Teva entity. That was docket 2565. And
21 the parties ultimately reached a stipulation on that, that
22 allowed us to move forward. And that was docket 2656.

23 So in part of our meet-and-confer efforts, we had
24 suggested maybe we could reach a similar sort of stipulation.
25 So I hope the parties can continue to work on that. But if we

1 reach an impasse, we may need to submit a motion on that with
2 respect to the Israeli entity. That would not impact the U.S.
3 Teva entity and that could go forward.

4 THE COURT: All right.

5 MS. LOCKARD: That's the first --

6 THE COURT: Daniel, any response?

7 MR. NIGH: Yes. I wasn't intimately familiar with
8 those discussions or that issue the last time. And I know
9 several others of our team were, and so we're just calling upon
10 them in terms of looking at those issues, and I think if we
11 have some meet and confers, we may be able to iron it out.

12 THE COURT: All right. Very well. Good.

13 I cut you off, Victoria, go ahead.

14 MS. LOCKARD: No. As you should have, because I'm
15 just kind of plowing through.

16 But the second point we raised in our submission,
17 there is one additional case that is not in the pool. It
18 hasn't been selected. It's in the bellwether set. But it is
19 also lacking subject matter jurisdiction because of the
20 plaintiff's Delaware residency, and that is Pate, P-A-T-E.

21 THE COURT: Right.

22 MS. LOCKARD: I think that is being worked out, but I
23 also wanted to get that on the record because I think we need
24 to get this pool cleaned up as a whole. Then we'll continue to
25 work on that.

1 And the other point we had talked with plaintiffs
2 about in our meet and confer is we would like to move the
3 Wave 3 cases forward. My client, Teva, has asked us to do
4 that. Those would be cases involving the Mylan side. And of
5 course, Teva is both on the ZHP and the Mylan side. So, you
6 know, there's nothing for us necessarily to do today. But we'd
7 like to continue talking with plaintiffs and with Mylan about
8 getting a schedule in place to follow as closely on the heels
9 of Wave 2.

10 THE COURT: I'm glad you raised that. And that's
11 what we should do. And we should make that a topic for our
12 next conference call.

13 Parties, at least the plaintiffs have indicated they
14 would get back to me by January 8th on some of these issues. I
15 will look at the calendar and schedule another conference call.

16 MR. NIGH: Your Honor, if I may, on Pate, I would
17 just ask if defense counsel can send an email looping in the
18 individual counsel on Pate, because we can't speak for them.
19 They've got certain things that they think, but cc us. I am
20 the counsel on Murawski, so I can deal with that issue on
21 subject matter jurisdiction.

22 THE COURT: Okay. Very well. All right.

23 Let's circle back now to selecting cases for Wave 2
24 for trial. We have a limited number of cases. I take it
25 counsel are comfortable with me using some basis to select --

1 random basis to select the cases that go to trial from that
2 limited pool of cases.

3 MS. LOCKARD: Right. I think that's correct. So the
4 pool is the seven cases that are listed in plaintiffs'
5 submission. I'll just run through them. It's Bonmon,
6 Crawford, Garcia, Lee, Smalls, Suits, and Weygandt.

7 THE COURT: Okay.

8 MR. NIGH: We agree, Your Honor.

9 THE COURT: All right. And I will use a basis to
10 make a random selection of three of those cases for trial.

11 Where do things stand with respect to the discovery
12 that is outstanding, the deposition of Jinsheng Lin, and the
13 production of documents?

14 MS. KAPKE: Your Honor, before we move to that topic,
15 can we -- is there something that you would like from the
16 downstream defendants, or can we have a decision from
17 plaintiffs on whether they are going to dismiss the downstreams
18 so that they can proceed in the manner that you indicated; that
19 cases in Wave 2 would be heard before Judge Bumb?

20 THE COURT: Daniel?

21 MR. NIGH: Well, first off, the decision to dismiss
22 may be an individual decision between the attorney and the
23 client.

24 THE COURT: Yeah.

25 MR. NIGH: So we can't speak on behalf, as

1 leadership, on behalf of those individual counsel. But my
2 suggestion is let's pick the new three and then we will have
3 sort of conversations with those attorneys and they'll have
4 conversations with their counsel.

5 I suspect, you know, we might have some of them that
6 don't have any pharmacy. We might have some where we assess it
7 and say, well, the pharmacy, you know, we may say, well, it's a
8 weaker claim, depending on state law, and/or we might also find
9 out that in some of them, you know, the pharmacy doesn't even
10 step in until later in the case in sort of some states where
11 it's an inability to pay or some sort of finding of that by the
12 manufacturer.

13 So I think we just got to see what's picked, see what
14 the individual state law is for each of those, see who we
15 actually have claims against the pharmacy on.

16 THE COURT: All right. Let's get the cases selected,
17 and then you can address the issue of these downstream
18 defendants in terms of whether the clients, plaintiffs
19 themselves are willing to dismiss the downstream defendants or
20 not, and then we'll just have to figure out where we go from
21 there. All right?

22 MS. KAPKE: Thanks, Your Honor. We would just
23 request that that also be done for the Lana Dufrene case as
24 well.

25 THE COURT: Yeah. For those cases that are going to

1 go forward, it needs to be done as well, absolutely.

2 All right. Anything else to discuss today?

3 MS. LOCKARD: Not that I'm aware of.

4 THE COURT: Anything else?

5 MR. NIGH: No, Your Honor.

6 THE COURT: All right. We'll adjourn the call for
7 today. I'll get the transcript, and I'll select those
8 remaining cases, and we'll proceed from there.

9 MS. LOCKARD: Thank you.

10 MR. NIGH: Thank you, Your Honor.

11 THE COURT: Thank you all. Thank you all very much.

12 MS. LOCKARD: Happy holidays.

13 THE COURT: Happy holidays.

14 MR. NIGH: Thank you.

15 THE COURT: Bye-bye.

16 (Proceedings concluded at 4:18 p.m.)

17 - - - - -
18 **FEDERAL OFFICIAL COURT REPORTER'S CERTIFICATE**
19 - - - - -

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled matter.

22

23

24 /S/John J. Kurz, RDR-RMR-CRR-CRC

December 21, 2024

25 Court Reporter/Transcriber

<p>MR. GEOPPINGER: [3] 8/14 8/16 9/2 MR. NIGH: [16] 5/7 7/14 10/15 10/19 11/3 11/20 11/22 12/6 13/7 14/16 15/8 15/21 15/25 17/5 17/10 17/14 MS. KAPKE: [6] 7/20 9/20 9/23 9/25 15/14 16/22 MS. LOCKARD: [17] 5/25 6/4 6/13 7/7 10/11 11/21 12/1 12/7 12/9 12/13 13/5 13/14 13/22 15/3 17/3 17/9 17/12 MS. 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